

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)

WT Docket No. 97-207

To: The Commission

REPLY COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("Commission" or "FCC") rules, 47 C.F.R. §§ 1.415 and 1.419, hereby submits these Reply Comments to the "Petition for Expedited Consideration" filed by the Cellular Telecommunications Industry Association ("CTIA") on February 23, 1998 in the above-captioned proceeding.¹ CTIA requests that the Commission expeditiously issue a Notice of Proposed Rulemaking on establishing "uniform, nationwide rules, for Calling Party Pays ("CPP") service." PageNet believes that it is premature for the Commission to propose rules governing the provision of wireless CPP service. The costs and benefits and, indeed, types of different wireless CPP service options are still being explored through trials and initial offerings, and any rules and regulations may be outmoded even before they could take effect. However, the record reflects that there are potential impediments to wireless CPP's competition with landline local telecommunications services being interposed by

¹ The Commission sought comment on CTIA's Petition by Public Notice on March 9, 1998. See Public Notice, DA 98-468 (rel. Mar. 9, 1998).

local exchange carriers ("LECs"). PageNet supports Commission adoption of rules to remove such impediments, if LECs continue to try and preclude or impede CPP.

I. THE COMMISSION SHOULD REFRAIN FROM REGULATION OF CPP SERVICES AND ALLOW MARKET FORCES TO SHAPE THE DEVELOPMENT OF WIRELESS CPP SERVICE OPTIONS

The Commission's policy of forbearing from regulating CMRS services has furthered the development of new wireless offerings as alternatives to traditional landline local exchange service. In continuance of this policy of forbearance, the Commission should avoid establishing regulation of wireless CPP service, but rather, allow the CPP service option to develop through market forces. The Commission should therefore refrain from proposing any rules, whether in the long term or on an expedited basis, that would prescribe by regulatory mandate how a wireless CPP service option develops. Only market forces can properly dictate if and how wireless CPP ultimately is provided.

PageNet, in addition to one-way paging services, is delivering new types of wireless services such as narrowband PCS and two-way messaging services that give customers creative, wireless alternatives to traditional landline local exchange service. Calling party pays is a service option that may have the potential of further expanding the range of wireless offerings as alternatives to traditional landline local exchange service. As discussed in its comments in this proceeding, PageNet has explored the feasibility of wireless CPP service options for paging in market trials internationally in Spain and domestically in market trials in the Ameritech region, including its ongoing market trial in Chicago.² Market forces also are determining what types of

² See PageNet Comments, filed in WT Docket No. 97-207, on Dec. 16, 1997 at 2-3.

customers may be interested in a calling party pays option for messaging or cellular services. As indicated in AT&T Wireless's comments, new market trials are being launched that will explore "innovative ways to provide CPP."³ These market trials should be allowed to take their course, without premature regulatory action by the FCC.

II. NATIONAL RULES ARE NECESSARY TO REMOVE IMPEDIMENTS TO THE DEVELOPMENT OF NEW WIRELESS SERVICE OFFERINGS SUCH AS CPP.

There are impediments to the broader availability of a wireless CPP service option that warrant Commission action to remove them. As discussed in this section, such impediments include: (i) the proposal by rural LECs that they not be required to offer billing and collection arrangements to CMRS carriers for wireless CPP; (ii) difficulty in establishing a legally binding relationship and limitations on liability with respect to the calling party who has no pre-existing relationship with the CMRS carrier; (iii) discriminatory treatment by incumbent LECs of CMRS carriers in interconnection arrangements; (iv) fully educating consumers regarding wireless CPP service options without hindering the convenience of the service; and (v) the proposal by payphone owners that CMRS carriers pay them per-call compensation for wireless CPP calls initiated from payphones. PageNet supports rulemaking action by the Commission to the extent necessary to remove actual impediments and identify potential impediments to the availability of wireless CPP.

A. National Rules And Monitoring Of LEC Billing And Collection Arrangements Should Apply To All Lecs.

Unreasonable or unreasonably discriminatory LEC billing and collection practices pose a potential roadblock to implementation of wireless CPP service options. The record shows that

³ AT&T Wireless Comments at 2-4.

high billing and collection costs, based on current LEC charges, pose a hindrance to the provision of wireless CPP services.⁴ The FCC should monitor LEC billing and collection practices to identify whether they are hindering the development of wireless CPP services. If it is the case that unreasonable or discriminatory LEC billing and collection practices are hindering wireless CPP services, then the Commission should assert its ancillary jurisdiction retained under Title I of the Communications Act to remedy them.⁵

Furthermore, the FCC should assert its jurisdiction in order to make clear that LECs cannot discriminate against CPP providers and that all LECs offer billing and collection arrangements to CPP providers. For example, OPASTCO's request that small and rural LECs be exempted if the FCC requires LECs to provide billing and collection arrangements to wireless carriers to implement CPP should be denied.⁶ A rural LEC exemption or waiver from a requirement to provide billing and collection for wireless CPP would create holes in areas covered by wireless carriers. In a community within an MTA with multiple LECs, wireless CPP service needs to be available everywhere that the wireless service provider has coverage, or CPP service will be available only in some areas but not others. This would assure that CPP service is a substantially inferior service to both existing wireless services, and to landline services, thereby guaranteeing that CPP's introduction would be short-lived.

⁴ For example, AirTouch and Vanguard note that, without affordable LEC billing and collection services, it is economically unfeasible for the wireless carrier itself to provide billing and collection for wireless CPP. AirTouch Comments at 3 n.4; *accord* Vanguard Cellular at 10.

⁵ In detariffing LEC billing and collection, the FCC noted that it retained ancillary jurisdiction under Title I. *See Detariffing of Billing and Collection Services*, 102 F.C.C.2d 1150, 1168 n.47 (1986) (citing *NARUC v. FCC*, 525 F.2d, 641 n.58 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976)).

⁶ *Cf.* OPASTCO Comments at 3.

B. The Commission Should Allow CMRS Carriers To File Informational Tariffs To Establish Enforceable Legal Relationships With Wireless CPP Callers.

Another potential barrier to providing wireless CPP is the need to have a legal contract that establishes a legal relationship between the calling party and the wireless carrier. There will be no pre-existing legal relationship between the caller and the wireless CPP carrier. In the absence of a legal document on file with the FCC to establish a relationship with callers, it will be difficult for a CMRS carrier to establish the proper notice to callers with respect to rates and terms and conditions of service with wireless CPP callers.⁷ Thus, PageNet supports allowing CMRS carriers to file informational tariffs or descriptive service reports with the FCC to identify to customers the terms and conditions of the service.⁸

Furthermore, allowing informational tariff filings or filings of service reports to establish legal relationship is consistent with the jurisdictional nature of wireless CPP as a commercial mobile radio service under Section 332 of the Act. A wireless CPP service option offers an interconnected mobile service to the public for profit and thus meets the statutory definition of Section 332(d) of a CMRS service. Moreover, since CMRS is a common carriage service subject to Title II, the FCC has authority under Section 203 of the Act to allow the filing of information CMRS tariffs or descriptive service reports under Section 219 of the Act, for wireless CPP service offerings.

⁷ Establishing a legal relationship with the caller also is necessary to carry out several transactional aspects of a wireless calling party service option, including, not only billing and collection, but also issuing credits for uncompleted calls or pages, and limiting carrier liability.

⁸ See Bell Atlantic Comments at Attachment, Proposed CPP Rule; PetroCom Comments at 3; Rural Telecommunications Group Comments at 16; USTA Comments at 8.

C. The Commission Should Establish Rules Ensuring That LEC Interconnection Arrangements Are Made Available On The Same Basis To CMRS Carriers As Clecs.

One of the goals of this proceeding is to explore ways to expand the wireless alternatives to traditional landline local telecommunications services. A substantial impediment to the development of such alternatives is incumbent LEC discrimination in the provision of interconnection arrangements to wireless carriers as opposed to CLECs. To the extent that wireless carriers are not given the same rates, terms and conditions of interconnection as CLECs, the deployment of wireless networks as alternatives to traditional landline telecommunications services will be limited. PageNet thus supports the Commission's adoption of national policies to ensure that CMRS carriers obtain the same interconnection rates, terms and conditions made available by incumbent LECs to CLECs.⁹

D. Consumers Should Be Fully Notified That A Charge Is Associated With The Wireless CPP Call Or Page.

PageNet agrees with the Ohio PUC that a caller has a right to know that additional charges will be incurred for a wireless CPP call or page. Notifying customers of the fact that there is a CPP charge is key to obtaining proper consent from the caller for paying the CPP charge. However, PageNet is concerned that implementing notification through a nationwide tone unique to wireless CPP may not be sufficient or reasonable to educate consumers about the wireless CPP service option.

⁹ See, e.g., Comments of Sprint Spectrum, filed in WT Docket No. 97-207 on Dec. 16, 1997 at 9-11 (supporting adoption national guidelines for expanding existing interconnection agreements to cover wireless CPP).

There are many variations in wireless CPP offerings that would not be fully or accurately reflected by a single notification tone. For instance, the Ohio PUC recommends that a preamble explain to a caller that a per-minute charge applies to the CPP call over and above the local usage charge.¹⁰ However, the CPP service may not necessarily be charged on a per-minute basis, but could be charged on a per-page, per-call, or even per-E-mail basis. The method of obtaining caller consent also can potentially vary based on where the call is made. With respect to touch tone telephones, a caller could be queued to press a designated number or tone to indicate consent to accept the charge. However, this form of consent would not work where the caller is calling from a rotary dial telephone.

Just as there is an interest in educating consumers regarding charges associated with wireless CPP service option, there is a compelling economic interest in not driving customers away from wireless services by making it too inconvenient or too expensive to use them. In considering issues regarding customer notification and consent to wireless CPP calls or pages, therefore, the Commission should avoid introducing requirements in the call or paging set-up process that make it inconvenient or unpalatable for the caller to place a wireless CPP call or page, but which nonetheless protect consumers.

E. Payphone Owners Should Not Be Entitled To Collect A Per-Call Compensation Charge From The CMRS Provider For CPP Calls Completed From A Payphone.

PageNet opposes the payphone owner trade association ("APCC") request that the CMRS provider be required to pay, in addition to the coin charge, a separate per-call compensation fee to payphone owners for CPP calls completed to wireless numbers from payphones.¹¹ Imposing a

¹⁰ See Ohio PUC Comments at 8.

¹¹ APCC Comments at 3-4.

per-call charge on CMRS carriers separate from the coin charge for each CPP call completed from a payphone would give payphone owners a double-recovery and increase the cost of providing wireless CPP service, to the detriment of customers of wireless CPP services.

The FCC's *Payphone Proceeding* has already established carrier-pays and end-user coinage charges to compensate a payphone owner for its per-call costs of originating a wireless CPP call.¹² The coin charge compensates payphone owners for calls from payphones, and the long-distance "carrier-pays" mechanism compensates payphone owners for long distance calls. If a local call is placed to a wireless CPP number, the payphone owner is already compensated for its costs for that call by the coin charge collected at the payphone from the caller. If a 1+, calling-card or other access code call is placed to a long-distance wireless CPP number from a payphone, the FCC's rules already provide that the IXC pay a 28.4-cent charge to the payphone owner to compensate it for that type of call.

III. CONCLUSION

For the foregoing reasons, the Commission should not adopt rules that might hinder the development of a wireless CPP service option in the marketplace. However, to the extent that rules or clarifications are necessary to remove existing, or potential, impediments to the

¹² See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, recon. 11 FCC Rcd 21233 (1996).

provision of wireless CPP and other new CMRS services as alternatives to traditional landline local telecommunications services, PageNet supports rulemaking action at this time.

Respectfully submitted,

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